IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.2108/1999.

State of Rajasthan and Others.

VERSUS

Motor Accident Claims Tribunal, Jaipur and Others.

07.12.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.B.K.Sharma, Deputy Government Advocate.
Mrs.Manjeet Kaur]
Mr.Vinay Mathur] for the respondents.

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This writ petition has been filed by the State challenging the order of the learned Motor Accident Claims Tribunal, Jaipur City, Jaipur in Misc. Case No.13/1996 decided on 24.05.1997 by which the application filed by the petitioners under Order 9 Rule 13 CPC was dismissed for setting aside the ex-parte award dated 02.06.1995.

The aforesaid application under Order 9 Rule 13 CPC was filed primarily with the contention that the State of Rajasthan had been wrongly impleaded as party and that in fact the vehicle stood transferred to the Rajasthan State Flying School. It is submitted that this fact was within the knowledge of the Tribunal as in two other claim petitions arising out of the same accident being Claim Case Nos.419/1992 [Manchand Vs. Kalu Ram] and 420/1992 [Babu Lal Vs. Kalu Ram], the Tribunal vide its order dated 04.06.1993 had impleaded the Rajasthan State Flying School as party and the United Insurance

Company with whom the vehicle was insured was also impleaded as party. It was, therefore, submitted that the petitioner State of Rajasthan through Chief Secretary was wrongly impleaded as party in the claim petition and, therefore, the award which had been passed against the State of Rajasthan deserves to be set aside as it has resulted in contradictory awards in respect of the same vehicle where the Rajasthan Flying School has been held to liable as owner and in this case the State of Rajasthan has been held to be liable as owner. It was also submitted that Kalu Ram, the driver of the vehicles, had since died and, therefore, the substitution ought to have been made before the learned Tribunal in this behalf.

Learned Tribunal, however, held that no sufficient ground had been shown by the petitioner State of Rajasthan for setting aside the ex-parte award. As per the findings of the learned Tribunal, the State of Rajasthan had been duly served on 14.09.1992 and since none appeared on behalf of the State of Rajasthan on 14.09.1992, proceedings were ordered to be taken ex-parte against the State of Rajasthan. The learned Tribunal has primarily dealt with the aforesaid finding regarding service upon the State of Rajasthan.

So far as the question which was raised that contradictory findings have been given in the three claims; two against the Rajasthan State Flying School and one against the State of Rajasthan in respect of the same vehicle regarding the liability as owner has not been decided by the learned Tribunal. While it may be correct that in an application under Order 9 Rule 13

CPC, this question may not be relevant, however, once an error apparent on the face of record is brought to the notice of the Court or Tribunal, nonetheless, it becomes the duty of the Court/Tribunal to look into the matter and after satisfying itself about the correctness or otherwise of the plea raised the said question requires to be adjudicated. In case, however, the Tribunal came to the conclusion that the liability in respect of the Claim Case Nos.419/1992 and 420/1992 had been fastened on the Rajasthan State Flying School, then in respect of the same accident for which the present claim was filed, the liability could not have been fastened on the State of Rajasthan through Chief Secretary or the Transport Commissioner.

Since in the impugned order (Annexure-1) dated 24.05.1997, the aforesaid question has not been dealt with by the learned Tribunal, I am inclined to set aside the impugned order and remand the case to the learned Tribunal for deciding the aforesaid application in the light of the averments made in the application.

The writ petition is consequently, allowed. The matter is remanded to the learned Tribunal. The parties are directed to appear before the learned Tribunal on 15.01.2007.

The writ petition as well as the stay application stand disposed of, as above.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.